IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.382 OF 2003

Prakash Ambaji Nadgouda....Petitioner

Versus

The Municipal Corporation of Greater
Mumbai & Anr.....Respondents

Mr.G.V.Murti for the Petitioner
Mrs. A.R. Joshi, for Respodnent No.1.

CORAM: F.I. REBELLO, J.
DATE : 6th September,2004

P.C.

1. The services of the petitioner, who was in the employment of the respondent No.1 came to be terminated by way of dismissal by order dated 24th January, 2003. It is this order which is the subject matter of the present challenge.

2. Show cause notice was issued to the petitioner on 25th June, 2002. In the notice it was pointed out that in Special Case No.9 of 1987 the Special Judge vide order dated 7th January, 2001 had held the petitioner guilty for offence punishable under Section 120B, 420 read with Section 120B, 466 read with Section 120B, 467 read with 120B, 468 read with 120B and 471 read with Section 120B of the Indian Penal Code and Section 5(2) read with Section 5(1)(b) of the Prevention of Corruption Act, 19047 read with Section 120B of the Indian Penal Code and had committed and sentenced the petitioner to undergo three years rigorous imprisonment and a fine of Rs.2,000/- on each count and in default of payment of fine to suffer rigorous imprisonment for 2 months. In the notice it was pointed out that in view of the said conviction the petitioner was not entitled to continue in service of the

respondent No.1 and is liable to be dismissed. The petitioner was called upon to show cause as why the said conviction should not be sufficient ground for dismissal from Municipal service. In response the petitioner filed reply on 6th July, 2002. It was therein set out that there is a mistake in quoting the provisions of the Prevention of Corruption Act. Secondly the show cause notice was vague as it does not mention any Rule or Circular or provision in M.S.R. M.S.C. & D. Rules under which the disciplinary action is contemplated. Thirdly, the delinquent was not furnished with the documents sought to be relied upon at the time of issuing show cause notice and lastly that the sentence has been suspended during the period of Appeal. It was also set out therein that the copy of the judgment seem not to have been obtained by the Head of the Department since it is not enclosed with the show cause notice. Various other contentions were raised in the reply. Along with the reply the petitioner also forwarded copy of the order of the Sessions Court dated 17th January, 2001 in Special Case No.9 of 1987.

3. The 2nd respondent thereafter by order of 24th January, 2003 was pleased to dismiss the petitioner from service. The order refers to the issuance of the show cause notice and the reply received. It is then pointed out that after careful consideration of the replies dated 16th July, 2002 and 16th September, 2002 and considering the judgment of the Special Judge the 2nd respondent issued the order of dismissal of the petitioner from service for his conviction in the said case.

4. In reply to the petition Prakash Kishor Hivare,

Administrative Officer of the respondent has filed an affidavit. Reference is made to the proceedings in the Special Case. In the said reply it is set out that as per the existing policy of the Corporation if an employee of the Corporation is found guilty by the trial Court the Municipal Commissioner is entitled to dismiss the employee after issuing show cause notice as per the policy of the Corporation. The contention that there was discrimination was denied. It was also denied that case of Kamble and the petitioner were similarly placed. It was further denied that the order was cryptic and contrary to equity, principles of natural justice and fair play.

5. Rejoinder has been filed by the petitioner. It is set out that had a personal hearing been given to the petitioner it would have been possible for the petitioner to point out that the case of the petitioner was no different from some other municipal employees against whom also proceedings were initiated. Reference is then made to the judgment in the case of **Tulsiram Patel & Ors. v. Union of India, AIR 1985 SC 1416 and Satyavir Singh & Ors. v. Union of India, (1985) 4 SCC 252** to contend that before imposing severe penalty of dismissal from the service of a Government servant, who is proposed to be dismissed as he has been convicted on a criminal charge, the disciplinary authority must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and if so what that penalty should be. It is then set out that Mr. Ranganathan the then Municipal Commissioner in the year 2000 had given directions that the policy of the Government as contained in Circular bearing No.CDR-1082/3362/69/XI dated 12th June, 1986

to be adopted while dealing with Municipal Officers service. The copy of the said policy was annexed. It is pointed out that the petitioner had completed 57 years and was to retire on 1st March, 2002 and during the entire period had never been suspended from the service nor enquiry held and the petitioner had unblemished service record.

6. At the hearing of this petition on behalf of the petitioner, learned Counsel firstly contends that the 2nd respondent before issuing the show cause notice and/or imposing punishment by way of dismissal did not have with him the copy of the judgment and order. This would disclose non-application of mind. On this count itself the petition should be allowed. It is then contended that the case of the petitioner is no different from other Government employees who were similarly placed. It is pointed out that it is not the duty of the petitioner to measure the land. The entire case having proceeded on that basis it was not open to the respondent No.2 to treat the petitioner differently from other Municipal employees similarly situated.

7. On hearing the learned Counsel in so far as the first contention is concerned it is clear that no specific ground has been raised in the petition in the manner as now raised before this Court. Apart from that as rightly pointed out on behalf of the Corporation even assuming that at the time of issuing show cause notice the 2nd respondent did not have the copy of the impugned judgment and order the same was forwarded by the petitioner to the respondent NO.2 by his representation to show cause notice. In other words at the time of imposing punishment, atleast from the petitioner's own record it is

clear that the order was available. It is, therefore, not possible to quash the order on the said contention. Apart from that if the petitioner had raised specific ground in the petition then only could the respondent have filed the reply or this Court could have called on the respondents to produce the records. In the absence of any ground that exercise need not be gone into. The 1st contention must be rejected.

8. In so far as the second contention is concerned, it is based on discrimination. It is alleged that similarly placed employees no action has been taken i.e. officers involved in the building known as Om Chambers. First and foremost it is clear from the ground itself as raised, that proceedings against the said officers had been quashed. In other words there was no conviction by criminal Court. On the contrary in the present case the Special Judge has convicted the petitioner for the offence as set out earlier. It is, therefore, clear that the case of the petitioner cannot be treated on the same footing as the case of the officers in respect of Om Chambers. Once that be the case the second contention as raised also is devoid of any merits.

9. In the light of that there is no merit in this petition. Rule discharged. There shall be no order as to costs.

(F.I. REBELLO, J.)